

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALLAN R. PEARSALL,

Plaintiff,

-against-

NOTICE OF REMOVAL

Civil Action # 6:21-cv-254 (MAD/ML)

WAL-MART STORES EAST, LP,

Defendant.

PLEASE TAKE NOTICE, that defendant Wal-Mart Stores East, LP, (hereinafter sometimes referred to as “defendant” or “Walmart”), by and through counsel, O’Connor, O’Connor, Bresee & First, P.C., hereby removes this action from the Supreme Court of the State of New York, County of Otsego (Index # EF2020-690), to the United States District Court for the Northern District of New York, pursuant to 28 U.S.C. §§ 1441(b) and 1332(a)(1), based upon complete diversity of citizenship between the parties and upon an amount in controversy that exceeds \$75,000 and in support of this application, defendant represents the following:

**STATEMENT IN SUPPORT OF REMOVAL AND
JURISDICTION AND AMOUNT IN CONTROVERSY**

1. Wal-Mart Stores East, LP., is the defendant in the above-entitled civil action now pending in the Supreme Court of the State of New York, County of Otsego, Index #EF2020-690 (hereinafter “State Action”).

2. Upon information and belief, plaintiff’s summons and verified complaint in the State Action were filed on or about November 10, 2020, a copy of which is attached as **Exhibit A**. The

Summons and Verified Complaint were served personally on the Walmart store located in Oneonta, New York on or about November 11, 2020.

3. Thereafter on or about November 24, 2020, defendant, by and through counsel, served its Verified Answer to the verified complaint, a copy of which is attached as **Exhibit B**. Defendant also served a Request for Supplemental Demand for Damages on or about November 24, 2020, a copy of which is attached as **Exhibit C**.

4. Plaintiff counsel served a response to defendant's request for supplemental demand for damages on February 4, 2021, a copy of which is attached as **Exhibit D**, together with the affidavit of service. According to plaintiff's response to defendant's request for supplemental demand for damages, plaintiff's *ad damnum* is in excess of \$75,000. Defendant is seeking removal of this matter to the United States District Court, Northern District of New York based upon diversity jurisdiction.

5. This notice is filed with this Court within (30 days) of service of plaintiff's response to the request for supplemental demand for damages that the *ad damnum* is in excess of \$75,000.

6. The State Action is civil in nature and involves a claim by plaintiff to recover money for personal injuries allegedly sustained by plaintiff, Allan R. Pearsall, on or about March 13, 2020 when he slipped and fell in defendant's retail store located at 5054 State Highway 23 in Oneonta, New York. *See*, **Exhibit A**.

7. Upon information and belief, Wal-Mart Stores East, LP has not received any other process, pleadings or orders.

8. The grounds for removal are that this Court has original jurisdiction pursuant to 28

U.S.C. § 1332(a)(1). This action involves citizens of different States, and there is complete diversity among all parties.

9. Upon information and belief, plaintiff is a citizen of the State of New York. *See*, **Exhibit A.**

10. Defendant, Wal-Mart Stores East, LP is a State of Delaware foreign limited partnership with its principal place of business in Bentonville, Arkansas.

11. This notice of removal is timely under the provisions of 28 U.S.C. §1446(b).

12. This notice of removal is being served upon counsel for plaintiff and filed with the Clerk of the New York State Supreme Court, County of Otsego.

13. In addition, the amount in controversy in this action, exclusive of interest and costs, exceeds the sum of seventy five thousand dollars (\$75,000).

14. Accordingly, the State Action is removable to this Court pursuant to 28 U.S.C. §§ 1441(b), as this Court has original jurisdiction pursuant to 28 U.S.C. 1332(a)(1). The diversity of citizenship and amount in controversy requirements of the latter section have been met.

WHEREFORE, defendant Wal-Mart Stores East, LP, respectfully submits this application for the removal of this action now pending in the Supreme Court of the State of New York, Otsego County, to the United States District Court for the Northern District of New York.

DATED: March 4, 2021

Yours, etc.,

O'CONNOR, O'CONNOR,
BRESEE & FIRST, P.C.

By _____

MICHAEL P. CAVANAGH

Bar Roll # 507534

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